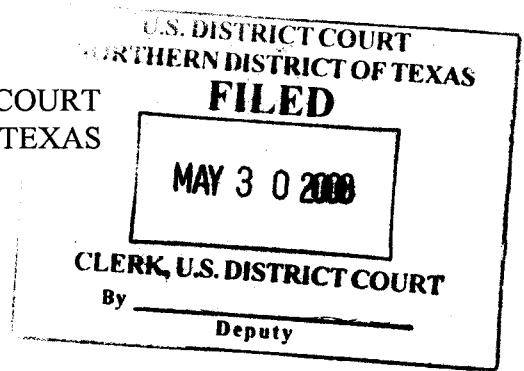


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION



JOHN LEZELL BALENTINE,

Petitioner,

v.

NATHANIEL QUARTERMAN, Director,
Texas Department of Criminal Justice
Correctional Institutions Division,

Respondent.

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2:03-CV-00039

****Capital Litigant****

**ORDER OVERRULING OBJECTIONS AND
ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
ON THE MOTION FOR CERTIFICATE OF APPEALABILITY**

On May 12, 2008, Petitioner filed *Petitioner Balentine's Objections to the Report and Recommendation of U.S. Magistrate Denying, In Part, Certificate of Appealability*. (Doc. #75.) After making an independent review of the pleadings, files and records in this case, and the *Report and Recommendation on the Motion for Certificate of Appealability* by the United States Magistrate Judge (doc. #73), the Court finds that the objections lack merit, that the findings and conclusions of the United States Magistrate Judge are correct, and they should be adopted as the findings and conclusions of the Court.

In one of his arguments, Petitioner contends the exhaustion requirement is not applicable because he is claiming, under 28 U.S.C. § 2254(b)(1)(B)(ii), that the state corrective process as a whole is ineffective to protect his rights due to circumstances of ineffective assistance of state


habeas counsel across the board and that he not merely complaining of the individual ineffective assistance of his state habeas counsel in this case. His objection that the United States Magistrate Judge misunderstood or mischaracterized this claim is without merit. The report and recommendation to deny habeas relief and the report and recommendation on the motion for certificate of appealability specifically identified Petitioner's argument in this regard but disagreed with Petitioner's conclusion that such circumstances could qualify under 28 U.S.C. § 2254(b)(1)(B)(ii) or constitute any legitimate excuse or reason for not presenting these claims to the state courts. Consequently, the United States Magistrate Judge's Report and Recommendation is adopted, and Petitioner's objections are overruled.

IT IS THEREFORE ORDERED that *Petitioner Balentine's Objections to the Report and Recommendation of U.S. Magistrate Denying, In Part, Certificate of Appealability* (doc. #75) be, and they are all hereby **OVERRULED** and **DENIED**.

IT IS FURTHER ORDERED that the *Report and Recommendation on the Motion for Certificate of Appealability* by the United States Magistrate Judge (doc. #73), including all of his findings and conclusions, are hereby **ADOPTED** as the findings and conclusions of the Court.

Accordingly, a Certificate of Appealability is **GRANTED** as to Petitioner's claims 1 and 2 and **DENIED** as to all other grounds.

Signed on this the 30th day of May 2008.


MARY LOU ROBINSON
UNITED STATES DISTRICT JUDGE